***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

WRIT PETITION No.23111 of 2004

% 21.12.2004

Between:

U.Satyanarayana, s/o.Nagabhushanam

... PETITIONER

AND

1 Sri Janardhana Swamy Temple, Kadiyam,

represented by its Manager and others.

...RESPONDENTS

! COUNSEL FOR THE PETITIOENR: Mr.T.S.Anand

^ COUNSEL FOR THE RESPONDENT No.1: Smt.N.Indrani,

Standing Counsel

COUNSEL FOR THE RESPONDENT Nos.2&3: G.P. for

Endowments

< Gist:

> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.23111 of 2004

Between:

U.Satyanarayana, s/o.Nagabhushanam, Aged about 65 years,
Cultivation,R/o.Kadiyam Village, East Godavari District.

... PETITIONER

AND

1 Sri Janardhana Swamy Temple, Kadiyam,

represented by its Manager.
2 Assistant Commissioner, Endowments Department,

Rajahmundry.
3 Regional Joint Commissioner, Multi Zone-I,

Endowments Dept., East Godavari Dist. at Kakinada.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of

CERTIORARI calling for the records relating to M.A. No.285 of 2003 dt.31.7.2004 before the Assistant Commissioner, Endowments Department, Rajahmundry as confirmed by the Regional Joint Commissioner, Multi Zone-I, Endowments Department, Kakinada in Appeal No.108 of 2004 dt.25.11.2004 and quash the same and consequently direct the respondents to consider the case of the petitioner to continue as lease of the land of Ac.3.50 cents in R.S.No.208 of Kadiyam Village, East Godavari District.

Counsel for the Petitioner: MR.T.S.ANAND

Counsel for the Respondent No.1: SMT.N.INDRANI, Standing Counsel for Sri Janardhana Swamy Temple

Counsel for the Respondent Nos.2 and 3: THE GOVERNMENT PLEADER FOR ENDOWMENTS

The Court made the following:

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.23111 OF 2004

O R D E R:

The petitioner is a lessee of Sri Janardhana Swamy Temple, Kadiyam, East Godavari District, in respect of Ac.3-50 cents of agricultural land in R.S.No.208 of Kadiyam village, from the year 1962. The lease stood terminated in view of Section 82 of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter referred to as "the Act"), as amended through Act 28 of 2002. Therefore, steps were initiated to resume the land from the petitioner. At that stage, he filed M.A.No.285 of 2003 before the Assistant Commissioner of Endowments, Rajahmundry, the second respondent, to declare him as landless poor, as defined under explanation to Section 82 of the Act. The second respondent recorded a finding that in addition to Ac.3-50 cents of land leased to him, the petitioner owns another extent of Ac.3-19 cents of dry land, and in that view of the matter, he cannot be declared as landless poor.

Aggrieved by the order of the second respondent, the petitioner filed Appeal No.108 of 2004 before the third respondent. The appeal was rejected, through order dated 25.11.2004. Hence, this writ petition.

Sri T.S. Anand, learned counsel for the petitioner, submits that his client is the kartha of a joint family which owns an extent of Ac.3-19 cents of dry land, and the share of

the petitioner would be only 1/6th out of it. He contends that the petitioner is the lessee of the land of the first respondent in his individual capacity, and if Ac.3-62 cents of leased land is added to 1/6th of his share in the joint family property, it does not exceed Ac.5-00. On this premise, learned counsel for the petitioner submits that the petitioner is entitled to be treated as a landless poor, as defined under the explanation to Section 82 of the Act, and that the view taken by respondents 2 and 3 is not correct.

Learned standing counsel for the first respondent and learned Government Pleader for respondents 2 and 3, on the other hand, submit that once the petitioner is acting as kartha of the joint family and the family is not divided, the extent of land leased to him, as well as the land held by the family, needs to be taken into account while deciding the status of the petitioner. According to them, the petitioner cannot plead a non-existent partition.

It is a matter of record that the petitioner is the lessee of Ac.3-50 cents of land of the temple referred to above, since 1962. Section 82 of the Act provided for automatic cancellation of the leases in respect of agricultural lands. This provision was held to be violative of Article 14 of the Constitution of India by this Court in **SAMADHI NARAYANA v. STATE OF A.P..** However, in **STATE OF A.P. v. NALLAMILLI RAMI REDDY & OTHERS**, the Supreme Court upheld the constitution validity of the said provision. The State Legislature amended Section 82 of the Act, through Act 27 of 2002, by incorporating the explanation, as well as some other provisions to protect the interests of lessees who are landless poor persons. The expression "landless poor person" is defined under the explanation to Section 82 of the Act as under:

> "For the purpose of this sub-section "landless poor person" means a person whose total extent of land held by him either as owner or as cultivating tenant or as both does not exceed 1.011715 hectares (two and half acres) of wet land or 2.023430 hectares (five acres) of dry land and whose monthly income other than from such lands does not exceed two hundred and fifty rupees per mensum or three thousand rupees per annum. For the purpose of computing the extent of the land 0.404686 hectares (one acre) of wet land shall be equal to 0.809372 hectares (two acres) of dry land."

Section 82 provides for protection to landless poor persons in the matter of termination of leases. They are extended the facility of purchasing the lands leased

to them, on payment of 75% of the cost of the land at prevailing market value.

The Government framed rules prescribing the mechanism for adjudication of the claims of tenants as landless poor persons. The Assistant Commissioner is vested with the power to adjudicate such claims and an appeal is provided to the Regional Joint Commissioner.

The petitioner claimed the status of landless poor and filed application. It was rejected by the second respondent, and the said order was affirmed by the third respondent in appeal.

From a reading of the definition of landless poor, extracted above, it is evident that the person claiming the status must not possess or hold an extent of land, more than two and half acres of wet, or five acres of dry, including the land which was leased to him. A Bench of this Court took the view that in adjudicating such claims, the original extent leased has to be taken into account, irrespective of the divisions in the family of the lessee. The petitioner did not plead that there was any partition in his family. Hence, that question does not arise in this case.

The petitioner admitted that he is the kartha of the joint family and the family owns an extent of Ac.3-19 cents of its own. He contends that if the same is divided among the coparceners, he would be entitled to only 1/6th of such land, and even if the corresponding extent is added to the land leased to him, it does not exceed five acres. It is too difficult to accept such a contention. The family is to be treated as a unit in the context of adjudicating the status of the lessee, as landless poor. There is no scope for applying the principles of notional partition in such cases. It should not be forgotten that what is extended under Section 82 of the Act in favour of a landless poor person is a special facility, and there is no intendment to confer absolute rights in favour of such persons, *vis-à-vis,* lands held by temples or other endowments. The predominant object underlying to the Act or Section 82 is to protect the lands of temples and other endowments, and the provisions of the Act have to be interpreted and construed keeping the same in view. A lessee cannot be permitted to blow hot and cold at the same time in the process of claiming the status of landless poor. The petitioner pleads that he is a lessee in his individual capacity. However, when it comes to the extent of the land owned by him, he presses into service the concept of family. At any rate, as long as the family is not partitioned and the entire land of Ac.3-19 cents stands in the name of the petitioner, the question of invoking the theory of

notional partition does not arise.

Hence, the writ petition is dismissed. There shall be no order as to costs.

_____

December, 2004

Note: L.R. copy to be marked.

(B/o)

pan

(One fair copy to the Hon'ble Sri Justice L. Narasimha Reddy, for his Lordship's perusal)

To

1 The Manager, Sri Janardhana Swamy Temple, Kadiyam.

2 The Assistant Commissioner, Endowments Department,

Rajahmundry.

3 The Regional Joint Commissioner, Multi Zone-I,

Endowments Department, East Godavari District, Kakinada.

4 Two CCs to the Government Pleader for Endowments,

High Court Buildings, Hyderabad (O.U.T)

5 The Under Secretary, Union of India, Ministry of Law,

Justice and Company Affairs, New Delhi.

6 The Secretary, A.P.Advocates Association Library,

High Court Buildings, Hyderabad.

7 Two C.D. Copies.